

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 4:14-cr-5-DPM-8

JOHNNY KUSKE

Reg. No. 28599-009

DEFENDANT

ORDER

1. Kuske moves for immediate release under 18 U.S.C. § 3582(c)(1)(A)(i) based on the ongoing COVID-19 pandemic and the risk it presents to his health if he contracts the virus. *Doc. 482*. The first and dispositive issue is exhaustion. 18 U.S.C. § 3582(c)(1)(A). Kuske requested that the Warden of FCI Yazoo City release him to home confinement early but hasn't received a response. *Doc. 482 at 3*. But home confinement and compassionate release are different; and Kuske acknowledges he hasn't requested that the Bureau of Prisons file a compassionate release motion on his behalf or exhausted his administrative rights to appeal a denial of that request. 28 C.F.R. §§ 571.63 & 542.15.

This Court has concluded that unless a warden fails to timely respond to a compassionate release request, an inmate must fully exhaust his administrative remedies before filing a motion in the

district court. *United States v. Cox*, Doc. 197 in E.D. Ark. No. 4:98-cr-73-DPM (8 September 2020). Further, this exhaustion requirement is jurisdictional and can't be waived. *Ibid.* Kuske's motion, Doc. 482, is therefore denied without prejudice for lack of jurisdiction.

2. The Court directs the Clerk to send Kuske a copy of the Court's *Cox* opinion with this Order.

So Ordered.

D.P. Marshall Jr.

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United States District Judge

13 January 2021